



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ELC JR. E002 OF 2023

IN THE MATTER OF AN APPLICATION BY SAMSON KOMEN
AND KIPKOSIOM CHEPYEGON FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW FOR ORDERS OF MANDAMUS

= AND =

IN THE MATTER OF ARTICLE 47 OF THE CONSTITUTION OF
KENYA 2010

= AND =

IN THE MATTER OF THE LAW REFORM ACT SECTIONS 8 AND
9, CAP 26 LAWS OF KENYA

= AND =

IN THE MATTER OF SECTION 20 GOVERNMENT PROCEEDINGS
ACT 1956

BETWEEN

SAMSON KOMEN 1ST
APPLICANT
KIPKOSIOM CHEPYEGON 2ND
APPLICANT

= VERSUS =

COUNTY ASSEMBLY CLERK,
BARINGO COUNTY 1ST
RESPONDENT

CHIEF OFFICER FINANCE/COUNTY
ASSEMBLY TREASURER,

BARINGO COUNTY **2ND**
RESPONDENT

CHIEF OFFICER HEALTH,
BARINGO COUNTY **3RD**
RESPONDENT

R U L I N G

Introduction

1. On 23rd May 2022, the applicants were granted leave to commence judicial review proceedings and seek an order of mandamus to compel the respondents to perform their duty by paying the *ex parte* applicants out of the revenue of Baringo County Government and/or the budget allocated for the Baringo County, the judgment debt of Kenya shilling two million five hundred thousand only (Kshs.2,500,000/) together with all accrued and accruing interest at court rate arising from the decree issued on 9th March, 2022 in Kabarnet SPMC ELC case No. 22 of 2020.
2. The *exparte* applicants filed the notice of motion dated 31st May, 2022 seeking an order of mandamus to compel the respondents to forthwith pay the said decretal amount with accrued interest.

3. The application is premised on the grounds on its face and supported by the affidavit of Samson Komen, the 1st applicant, in which the grounds on the face of the application are reiterated.
4. As can be discerned from the court record particularly the proceedings of 18th February 2025, the circumstances that obtained when the application was filed have since changed greatly as the respondents have since paid a substantial amount of the decretal amount. As at 18th February, 2025 only Kshs. 500,050 remained unpaid.
5. Through their response to the application, namely the replying affidavit of Judith Kaimogul, a legal officer employed by Baringo County Public Service Board, the respondents acknowledge that they are yet to settle the balance of the decretal amount, being Kshs. 550,000/-. The deponent of the replying affidavit gives the reason for delay in meeting the respondents obligation to pay the decretal amount as a

directive issued by the National Treasury requiring County Governments to use e-procurement system for payment of claims which system is yet to be updated and delay by the National Government to release funds to County Governments thereby occasioning cash flow constraints to the respondents.

6. It is the respondents' case that the delay in settlement of the decretal amount is not on account of refusal or neglect to honour the decree but delay in release of budgetary allocation by the National Government.
7. Indicating that they remain fully committed to settle the decretal amount upon receipt of budgetary allocation, the 1st respondent urges the court to give it two (2) months to finalize payment.
8. On 18th June 2025, directions were given that the application be disposed of by way of written submissions.
9. On 12th November 2025, when the application came up for mention to confirm filing of submissions, counsel for the

applicants informed the court that he would rely on the grounds on the face of the application and the affidavit sworn in support thereof and would, therefore not file any written submissions.

10. The respondents filed submissions on 12th November 2025 which I have read and considered.

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Analysis and determination

11. As pointed out herein above, the circumstances which obtained at the time of filing the motion herein had substantially changed when directions in respect of the application were issued in that the respondents' had partially met their legal obligation in respect of the decree issued in favour of the applicants. Nevertheless, as pointed out herein above, the respondents are yet to fully perform their legal obligation arising from the decree obtained against them.
12. In the response filed in respect of the application, the respondents have acknowledged existence of that obligation and offered an explanation as to why they have not fully satisfied the decree issued in favour of the respondents.
13. I have carefully read and considered the explanation offered by the respondents for the delay in fully meeting their legal obligations arising from the decree of the court, namely directions issued by National Treasury on electronic procurement and delay in release of funds by the National Governments to County Governments thereby affecting cash-

flow. Taking into account that the decree of the court arises from a consent judgment and the time taken to fulfil the respondents' obligation which is more than four years, I find the explanation offered by the 1st respondent to be incapable of properly accounting for the delay in fully settling the decretal sum. Be that as it may, considering that the 1st respondent has offered to pay the remainder of the decretal sum if granted time to do so, I am inclined to grant them time to fulfil their unfulfilled legal obligation, failing which the application for an order of mandamus compelling them to pay the balance of the decretal amount, being Kshs. 550,050/ together with accrued interest shall automatically issue in favour of the applicants.

14. The upshot of the foregoing is that I find the application dated 31st May, 2022 in so far it relates to the unpaid decretal amount of Kshs. 550,050/- to be merited. Whilst that determination would ordinarily lead to grant of the orders issued in favour of the applicant, in exercise of the discretionary power granted to this court in granting orders

like the one sought by the applicants, I decline to forthwith grant the order and instead order and direct the respondents to, within forty-five (45) days from the date of delivery of this ruling, pay the applicants the unpaid balance of Kshs. 550,050 together with accrued interest in respect thereof, if any, failing which the application for an order of mandamus compelling the respondents to pay the balance of the decretal amount, being Kshs. 550,050/ together with accrued interest, if any, shall automatically issue in favour of the applicants.

15. As the applicants have demonstrated that their application is merited, I award them the costs of the application to be paid by the 1st respondent.

16. Orders accordingly.

**Dated, signed and delivered virtually at Busia this 3rd day of
March, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Mr Kiptoo for the *Ex parte* Applicants

N/A for the Respondents

Court Assistant; Tracy

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